

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

GARY RENELIQUE,

Plaintiff,

-against-

03-CV-1145  
(LEK/RFT)

JOSEPH F. DAVID *et al*,

Defendants.

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**DECISION AND ORDER**

This matter comes before the Court following a Report-Recommendation filed on September 30, 2005, by the Honorable Randolph F. Treece, United States Magistrate Judge, pursuant to 28 U.S.C. § 636(b) and L.R. 72.3(c) of the Northern District of New York.

Within ten days, excluding weekends and holidays, after a party has been served with a copy of a Magistrate Judge's Report-Recommendation, the party "may serve and file specific, written objections to the proposed findings and recommendations," Fed. R. Civ. P. 72(b), in compliance with L.R. 72.1. In the interval of at least fifteen days since the Magistrate Judge filed the subject Report-Recommendation, no objections to it have been raised. Furthermore, after examining the record, the Court has determined that the Report-Recommendation is not subject to attack for plain error or manifest injustice.

Accordingly, it is hereby

**ORDERED**, that the Report-Recommendation is **APPROVED** and **ADOPTED** in its **ENTIRETY**; and it is further

**ORDERED**, that Defendants Geren and Rosenthal are **DISMISSED** from this action,

**WITHOUT PREJUDICE**, in accordance with FED. R. CIV. P. 4(m), due to Plaintiff's failure to timely effectuate service; and it is further

**ORDERED**, that, to the extent Plaintiff does not seek prospective relief, the claims asserted against the Defendants in their official capacities are **DISMISSED** pursuant to the Eleventh Amendment; and it is further

**ORDERED**, that Defendants' Motion for Summary Judgment (Dkt. No. 58) is **GRANTED** and Plaintiff's claims asserted against Defendants Kotzin, Cavanaugh, Loubier, Smith, Sergeant Moore, Haner, and Peterson, are **DISMISSED WITHOUT PREJUDICE** due to Plaintiff's failure to exhaust his administrative remedies; and Plaintiff's claims against Defendants David, Eldred, Woods, Smith, and C.O. Moore are **DISMISSED WITH PREJUDICE AS FRIVOLOUS**, in light of Plaintiff's failure to allege personal involvement of these Defendants; and it is further

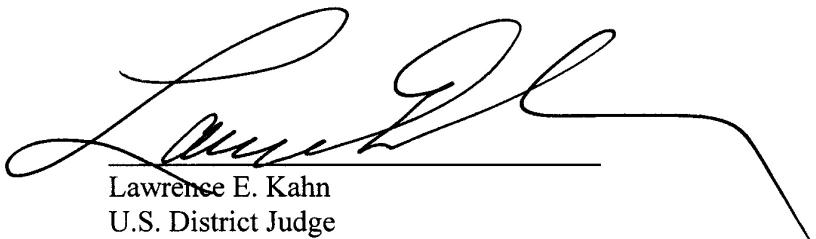
**ORDERED**, that Plaintiff's claims under the American with Disabilities Act are **DISMISSED**; and it is further

**ORDERED**, that to the extent not covered above, Defendants' Motion for Summary Judgment (Dkt. No. 58) is **GRANTED** and Plaintiff's entire Complaint is **DISMISSED**; and it is further

**ORDERED**, that the Clerk serve a copy of this order on all parties.

IT IS SO ORDERED.

DATED: November 28, 2005  
Albany, New York



Lawrence E. Kahn  
U.S. District Judge